

SUBJECT: Revising procedures for civil commitment of sex offenders

COMMITTEE: Corrections — favorable, without amendment

VOTE: 6 ayes — Haggerty, Farrar, Hodge, Ellis, Hopson, Isett

0 nays

3 absent — Allen, Gray, Ritter

SENATE VOTE: On final passage, April 4 — 30-0, on Local and Uncontested Calendar

WITNESSES: For — None

Against — None

On — *Registered but did not testify*: Chris Thetford and Gina DeBottis, Special Prosecution Unit; Kelly Page, Council on Sex Offender Treatment

BACKGROUND: Under Health and Safety Code, sec. 841, certain repeat sex offenders released from a prison or a state mental health facility can be committed through civil courts to outpatient treatment and supervision. The law authorizes the civil commitment of sexually violent predators, defined as repeat sexually violent offenders who suffer from a behavioral abnormality that makes them likely to engage in a predatory act of sexual violence. A multidisciplinary team evaluates sex offenders for potential civil commitment. A special division of the prison prosecution unit represents the state and handles civil commitment proceedings. People considered for civil commitment have the right to counsel from the Texas Department of Criminal Justice's (TDCJ) Office of State Council for Offenders.

If a judge or jury finds that a person is a sexually violent predator, the judge must commit the person for outpatient treatment and supervision, to be coordinated by a case manager employed by the Interagency Council on Sex Offender Treatment. The supervision and treatment must continue until the person no longer is considered likely to engage in a predatory act of sexual violence. Supervision must include tracking services. The state must pay up

to \$1,600 for the cost of a civil commitment proceeding, including the costs of appointed counsel and experts and of outpatient treatment and supervision.

Judges must conduct biennial reviews of civilly committed offenders, who may petition the court for release at any time. Petitions also may be filed upon recommendation by the offender's case manager. Failure to comply with a commitment requirement is a third-degree felony, punishable by two to 10 years in prison and an optional fine of up to \$10,000.

DIGEST:

SB 1048 would make many changes to the procedures governing the civil commitment of sex offenders, including imposing consequences for failing to submit to examinations required by prosecutors and changing certain procedural deadlines.

The bill would take effect September 1, 2001, and would apply to proceedings initiated before, on, or after that date.

Failure to submit to examinations. People on trial to determine whether they were sexually violent predators would have to submit to all expert examinations required or permitted by the state to prepare for the trial. Failure to submit to an exam on the state's behalf could have these consequences:

- ! failure to submit to the exam could be used as evidence against the person at the trial;
- ! the person could be prohibited from offering into evidence the results of an expert examination performed on his behalf; or
- ! the person could be subject to contempt proceedings for violating a court order.

Deadlines. SB 1048 would require TDCJ or the Texas Department of Mental Health and Mental Retardation (MHMR) to notify the multidisciplinary team of the release of people who would be eligible for civil commitment at least 14 months, rather than 16 months, before their release. The multidisciplinary team would have 60 days, rather than 30, to determine whether a person was a repeat sexually violent offender. TDCJ and MHMR would have 60 days, rather than 30, to determine if a person

suffered from a behavioral abnormality and to notify the prosecutor of that determination.

A petition alleging that a person was a sexually violent predator would have to be filed within 90 days, rather than 60, of the date when the case was referred to the prosecutor. Judges would have to conduct trials within 180 days, rather than 60, of the filing of the petition.

Miscellaneous changes. Outpatient treatment and supervision for people deemed to be sexually violent predators would have to begin on the entering of an order of civil commitment by a judge, rather than on the person's release from a secure correctional facility or discharge from a state hospital.

The requirement that people who have been civilly committed notify their case managers within 48 hours of any change in their status that affects proper treatment and supervision would have to occur immediately, but at least within 24 hours.

The Office of State Counsel for Offenders would have to represent indigent people subject to civil commitment proceedings, rather than all people. Courts would have to appoint counsel to represent indigent people in civil commitment proceedings if the State Counsel for Offenders could not do so.

The bill would change the composition of the multidisciplinary team. The team would have to include one person, rather than two, from MHMR and two people, rather than one, from the Council on Sex Offender Treatment.

The Council on Sex Offender Treatment would have to enter into an interagency agreement with TDCJ for housing for people civilly committed and would have to reimburse TDCJ for the housing costs, as opposed to the current requirement that the council contract for the housing. The rulemaking authority given to the council to administer the chapter would be specifically for treatment and supervision.

SB 1048 would state that, although civil commitment proceedings are subject to the rules of civil procedure and appeal, the civil commitment statute controls in case of any conflicts.

The state's responsibility to pay the costs of state or appointed counsel in civil commitment proceedings and the cost of outpatient treatment and supervision would be limited to "reasonable" costs.

People deemed to have behavioral abnormalities under the current law would not be considered people of unsound mind under the Texas Constitution's provisions governing the commitment of people of unsound mind.

Personal information, including addresses, telephone numbers, and social security numbers, identifying the victim of a person subject to civil commitment proceedings would be privileged from discovery by the person.

Failure to give a notice required under the civil commitment statute would not be considered a jurisdictional error.

The following convictions, judgments, and verdicts would not affect orders of civil commitment: a conviction for a felony if a sentence was not imposed; a conviction for a misdemeanor, regardless of whether a sentence was imposed; and a judgment or verdict of not guilty due to insanity for any offense without a commitment to MHMR. The duties imposed under the civil commitment statutes would be suspended during any confinement of a person for a misdemeanor.

Employees and officers of the Texas Department of Health would be added to the list of those immune from liability for good-faith conduct under the civil commitment statute.

**SUPPORTERS
SAY:**

SB 1048 would clarify various provisions in the state's civil commitment laws to ensure that the process runs smoothly and efficiently.

The bill would impose needed uniformity in the process for examinations of sex offenders by experts. In cases that have been brought so far, some judges have required offenders to submit to the state's examinations and others have not. Without a person submitting to exams by the state's experts, it can be difficult or impossible for the state to rebut testimony from the offender's experts. Requiring people to submit to examination by the state's experts would ensure that both sides could use their experts in a trial. Because civil

commitment proceedings are civil proceedings, there should be no concern about constitutional violations.

The deadline changes in SB 1048 would ensure adequate time for all procedures. Courts and others have had difficulties meeting the deadlines under current law, so SB 1048 would provide an additional 30 to 120 days for most procedures.

Other provisions in the bill would make the process more efficient or would anticipate potential problems. For example, the bill would allow a court to appoint an attorney for a person being considered for commitment if there were a conflict of interest in having representation from the Office of State Counsel for Offenders.

**OPPONENTS
SAY:**

Using the failure of people to submit to examinations as evidence against them could violate their constitutional protections. SB 1048 could mean that if a person did not submit to an exam, his assertion of the right to remain silent could be used against him, contrary to the Constitution.

People should have the right to refuse to submit to exams, especially in the absence of a requirement that the examiner be reliable. Recent news stories of unqualified and unethical government experts illustrate the potential pitfalls of unquestioned reliance on certain experts.